

Inventor: John C. Reed  
Serial No.: 09/955,526  
Filed: September 12, 2001  
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- Group I: Claims 1 to 17, directed to a non-naturally occurring plant, a transgenic plant, a tissue derived from a transgenic plant, the plants containing an ectopically expressed nucleic acid molecule encoding a plant anti-death (PAD) polypeptide, and a method of increasing the resistance of a plant to biotic or abiotic stress by ectopically expressing a nucleic acid molecule encoding a PAD polypeptide;
- Group II: Claims 18 to 21, directed to an isolated polypeptide corresponding to SEQ ID NO:2.
- Group III: Claims 22 to 28, directed to an isolated nucleic acid molecule corresponding to SEQ ID NO:3 or encoding SEQ ID NO:4; and
- Group IV: Claims 29 to 46, directed to a non-naturally occurring plant that ectopically expresses a nucleic acid molecule encoding a BI-1 polypeptide corresponding to SEQ ID NO:4, and to a method of increasing the resistance of a plant to biotic or abiotic stress by ectopically expressing a nucleic acid molecule encoding a BI-1 polypeptide.

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#### Election of Invention

Applicant traverses the restriction requirement for the reasons stated below. Nevertheless, in order to be responsive to the Office Action, Applicant elects the invention of Group IV, claims 29 to 46, for examination. Applicant reserves the right to pursue prosecution of non-elected claims in a later filed application claiming the benefit of priority of the above-identified application.

#### Regarding restriction of Groups III and IV

The restriction requirement is traversed with respect to the division of the claims of elected Group IV from those of Group III. Applicant submits that, while the claims of Group IV are patentably distinct from those of Group III, a thorough search of the claims of Group IV likely will result in art relevant to the examination of the claims of Group III. The claims of Group IV are directed to non-naturally occurring plants that ectopically express a nucleic acid molecule encoding a tomato BI-1 polypeptide or fragment, and methods of increasing resistance of a plant to stress by ectopically expressing a nucleic acid molecule encoding a tomato BI-1 polypeptide or fragment. The claims of Group III are directed to isolated nucleic acid molecules encoding a tomato Bax inhibitor-1 (BI-1) or fragment that are used in the plants and methods of the claims of Group III.

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Applicant submits that a search of non-naturally occurring plants that ectopically express a nucleic acid molecule encoding a tomato BI-1 polypeptide or active fragment, and methods involving ectopically expressing such a molecule in a plant, will overlap with a search of nucleic acid molecules that encode a tomato BI-1 polynucleotide. In this regard, art relevant to expressing a tomato BI-1 nucleic acid molecule in a plant is likely to include a search of expressing a tomato BI-1 polypeptide or fragment in general, which would encompass identifying tomato BI-1 polypeptides and fragments capable of being expressed. In view of the common body of literature relevant to the claims of Groups III and IV, Applicant asserts that the Examiner would not be seriously burdened to search and examine the claims of Groups III and IV together, and doing so would increase the efficiency of the search and examination process of this application.

#### CONCLUSION

In view of the remarks submitted herein, Applicant elects claims 29 to 46 of Group IV for examination, and requests that the Examiner reconsider the restriction requirement and examine claims 22 to 28 (Group III) together with the elected claims.

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The Examiner is invited to call the undersigned agent or Cathryn Campbell if there are any questions regarding this application.

Respectfully submitted,

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